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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/831,899

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Gerard Reynaud

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EXAMINER

EREZO, DARWIN P

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,899

Applicant(s)

REYNAUD, GERARD

Examiner

Darwin P. Erez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 10, 14, 16-20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,633,705 to Teder.

3. As to claims 14, 17-20, 23 and 24, Bolnberger teaches a mask having a flexible cap **1**; an exhalation port **4** pierced through the cap; a first microphone capsule **13** positioned above the exhalation port; a tubular mouth-piece **9, 14** extending from a first distal end disposed adjacent the flexible cap to a second distal end projecting away from the flexible cap, the first microphone capsule mounted at the first distal end of the tubular mouthpiece (the part of **9** closes to the mouth-piece), the second distal end of the mouthpiece disposed away from the microphone capsule and defining aperture turned away from the flexible cap (see Fig. 3); a cable **19** connected to the microphone capsule; wherein Bolnberger the mouthpiece **9,14** (as seen in Fig. 8) is larger than the opening facing the microphone; wherein the microphone capsule has an acoustic chamber having a plurality of holes **23** with a high pass filtering capability of about 50-4000 Hz; a body **3** mounted on the flexible cap and an arm **2** extending from the body; wherein the aperture is turned towards a center of a location at which the user's mouth is adapted to be positioned.

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Bolnberger is silent with regards to the mouthpiece being a conical tubular mouthpiece.

Teder teaches that it is known in the art for a microphone **24** to have a tubular mouthpiece **28** for substantially reducing the level of background noise picked up by the microphone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tubular mouthpiece of Bolnberger to a conical tubular mouthpiece, as taught by Teder, because having a conical tubular mouthpiece reduces the level of background noise picked up without decreasing the response of the microphone (col. 2, lines 42-73; Teder).

4. As to claim 10, Bolnberger is silent with regards to an elliptical mouthpiece. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use an elliptical aperture because Applicant has not disclosed that an elliptical aperture provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the aperture of Bolnberger or the claimed elliptical aperture because both type of aperture perform the same function.

Therefore, it would have been obvious matter of design choice to modify Bolnberger to obtain the invention as specified in claim 10.

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5. As to claim 16, Bolnberger discloses the claimed invention except for the mask further comprising a second microphone capsule. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second microphone capsule, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

6. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,633,705 to Teder and in further view of US 5,503,141 to Bolnberger et al.

Bolnberger/Teder is silent with regards to the mouth-piece having a metal lattice acoustic screen positioned in the aperture. Bolnberger discloses a mask having a cloth acoustic screen **32** positioned in a mouth-piece aperture. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use an acoustic screen in the device of Bolnberger because it protects the microphone capsule from moisture, dust and the like (Bolnberger; col. 5, lines 3-5). Furthermore, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use a metal lattice screen because Applicant has not disclosed how the metal lattice screen provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the cloth screen of Bolnberger or the claimed metal lattice screen because both screens perform the same function.

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7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,633,705 to Teder and in further view of US 4,961,420 to Cappa et al.

Bolnberger/Teder teaches all the limitations of the claims except for a mask further comprising a baffle fixedly joined to the flexible cap and positioned between the microphone capsule and the exhalation port. Cappa teaches a baffle **40** attached to a cap and positioned above an exhalation port. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the baffle of Cappa in the device of Bolnberger in order to prevent expired air from penetrating the upper portions of the mask (col. 7, lines 36-43).

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,633,705 to Teder and in further view of 3,910,269 to Ansite et al.

Bolnberger/Teder teaches all the limitations of the claim except for a mask further comprising plural catches joined to the flexible cap and mounted substantially perpendicular to an external face of the flexible cap. Ansite teaches a mask having plural catches **53** joined to a flexible cap and mounted substantially perpendicular to an external face of the flexible cap. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the plural catches of Ansite to the mask of Bolnberger because it allows the user to use straps to further secure the mask on the user's head.

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9. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,718,415 to Bolnberger et al. in view of US 3,633,705 to Teder and in further view of US 3,314,424 to Berman.

Bolnberger/Teder is silent with regards to the device having an adjustable mouthpiece. Berman teaches a mask having a microphone mounted on an adjustable mouth-piece (via element **44**) that is capable of varying from 10-18 mm. Therefore, it would have been obvious to modify the device of Bolnberger to include the adjustable means of Berman because it allows the user to move the mouth-piece directly in front of the user's mouth.

Response to Arguments

10. Applicant's arguments with respect to claims 10-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who's telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on (703)308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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GLENN K. DAWSON
PRIMARY EXAMINER